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By PwC Deutschland | 24. April 2012

Freedom of establishment excludes free movement of capital?

An ECJ advocate general has suggested the court deny an individual freedom of capital movement on the grounds that the more appropriate freedom is that of establishment, which, however, is not relevant in the circumstances.

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The German inheritance tax rules privilege significant holdings in unquoted companies, provided the heir maintains his or her interest for a set period of time. The main objective is to support the continuity of family businesses. Accordingly the privilege is restricted to companies (and other businesses) within the EEA. A German resident inheriting the rights to the entire share capital in a Canadian company from her late father, also a German resident, has challenged this geographical restriction on the grounds that it infringes her freedom of capital movement under the EU treaties.

The ECJ advocate general on the case has recently published her opinion to the effect that whilst the freedom of capital movement is infringed, the freedom of establishment is the more important of the two here relevant fundamental freedoms. This, though, is not infringed as it does not apply to establishments outside the EU or EEA but nevertheless precludes direct application of the freedom of capital movement. Accordingly, the heiress in the case at issue cannot claim the privilege she seeks.

The ECJ case reference is C-31/11 *Scheunemann*, opinion of March 20, 2012.

Schlagwörter

free movement of capital, inheritance tax, significant holding